

Amended: April 2, 2019
Second Reading and Adoption: May 7, 2019

CITY OF MOUNT RAINIER, MARYLAND

ORDINANCE NO. 05-2019

Drafted by: Kenneth Sigman, City Attorney

Introduced by: Malinda Miles

Amending the *Mount Rainier Code* to Add Chapter 12D.

WHEREAS, the City Council desires to protect the public health, safety and welfare from the adverse effects of the proliferation of telecommunications facilities while facilitating the provision of modern telecommunications services; and

WHEREAS, the careful deployment of wireless telecommunications facilities in the public right-of-way is desirable, but unregulated deployment may harm the public health, safety, and welfare; and

WHEREAS, because of technological developments and increased demand for wireless services, wireless carriers and the companies that provide infrastructure to support the wireless carriers are increasingly seeking to install antennas in public rights-of-way; and

WHEREAS, while the Prince George's County Zoning Code regulates the installation of telecommunications antennas and support structures on private property in Mount Rainier, the City has the authority to regulate such installations in City rights-of-way; and

WHEREAS, federal law significantly restricts local government authority to regulate the installation of telecommunications facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MOUNT RAINIER, MARYLAND, that, effective immediately, the *Mount Rainier Code* is amended to include the following:

Chapter 12D

Wireless Facilities and Support Structures in City Rights-of-Way

Section 12D-100. Definitions.

“Antenna” means that part of a wireless facility designed to radiate or receive RF signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services and microwave communications.

“Applicant” means the person applying for a permit under this chapter, including the applicant’s officials, employees, agents, and contractors.

“Collocation” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible pole for the purpose of transmitting or receiving RF signals for communications purposes. As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless communication facility installed at a single site.

“Wireless facility” means, collectively, the equipment at a fixed location or locations within a City right-of-way that enables communications services, including: (i) radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply, backup battery, and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A wireless facility does not include the pole, tower or support structure to which the equipment is attached.

“Wireless support structure” means a proposed or existing pole located in the City right-of-way or a pole proposed to replace an existing pole in the right-of-way to which wireless facilities are attached or proposed or intended to be attached.

“Director” means the Director of Code Enforcement or his or her designee.

“FCC” means the Federal Communications Commission.

“Permittee” means the person that receives a permit to work in or install facilities, equipment or structures in the right of way under this chapter and the person that owns facilities, equipment or structures permitted to be installed under this chapter, including the permittee’s officials, employees, agents, and contractors.

“Pole” means a single shaft of wood, steel, concrete, or other material at least 26 feet tall and no more than 50 feet tall and capable of supporting the equipment mounted thereon in a safe and adequate manner, including a privately-owned utility pole.

“Privately owned utility pole” means a utility pole that is not owned by municipal, county, or state government.

“RF” means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“Substantial change” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, and as applicable to facilities in the public right-of-way, which defines that term as a collocation or modification that:

- a. Increases the overall height more than 10% or 10 feet (whichever is greater);

- b. Increases the width more than 6 feet from the edge of the communications structure;
- c. Involves the placement of any new enclosures on the ground when there are no existing ground-mounted enclosures;
- d. Involves the placement of any new ground-mounted enclosures that are ten percent (10%) larger in height or volume than any existing ground-mounted enclosures;
- e. Involves excavation or deployment of equipment outside the area in proximity to the installation and other wireless facilities or equipment already deployed on the ground;
- f. Would defeat the existing concealment elements of the wireless support structure; or
- g. Violates a prior condition of approval of a permit for the site.

“Urban forest tree” means an urban forest tree as defined in Chapter 12B.

Section 12D-110 Permit required for installation of wireless facilities and wireless support structures.

A. No person shall install any wireless facility or wireless support structure in the City right-of-way, or begin any such installation, without first obtaining a permit from the City.

B. Permit applications for the installation of wireless facilities or wireless support structures shall be reviewed, and a decision rendered, according to the following time periods as required by federal law at the time of enactment of this section, or such greater time periods as authorized under subsequent law:

1. Minor change applications shall be reviewed and rendered within 60 days of the date of filing of a complete application.
2. Substantial change applications shall be reviewed and rendered within 90 days of the date of filing of a complete application.
3. An application shall be considered complete when the City receives payment of the application fee and all information and documents required by section 12D-120 and any written policies of the Director. The Director shall notify the applicant within ten days of receipt of an application if the Director deems the application to be incomplete, including whether an additional fee is required to pay the cost of any contractors necessary to process the application. Such notice shall identify the documents and information missing from the application and the amount of additional payment required.

C. Fees charged for permit applications for wireless facilities or wireless support structures until June 30, 2019, shall be as follows:

1. An initial non-recurring fee of \$500 for a single up-front application that includes up to five wireless facilities, and an additional \$100 for each additional wireless facility for which an application is submitted simultaneously, and

2. A non-recurring fee of \$1,000 for a new or replacement wireless support structure.

D. Commencing July 1, 2019, the application fees for permits under this Chapter shall be as set forth in the City of Mount Rainier Fee Schedule, unless the Schedule does not address such fees, in which case the fees shall remain at the amount set in this section.

E. If the City, in the exercise of reasonable discretion, elects to utilize a contractor to assist in consideration of all or part of an application for a permit to install wireless facilities or support structures, the applicant shall be required to pay the actual cost incurred by the City. Such contractors may include, but shall not be limited to, arborists and engineers.

Section 12D-120. Wireless support structures and facilities installation permit application contents.

A. Applicants for a permit to install wireless facilities or wireless support structures must complete an application form and submit documentation with the following information pertaining to a proposed deployment of wireless facilities or wireless support structures:

1. A technical description of the proposed communication facilities or support structures, including the purpose and intent of the proposed facilities or support structures, a written description identifying the geographic service area for the subject installation, photographs of the wireless facilities and related equipment to be installed, an accurate visual impact analysis with photo simulations, and a list of any existing antennas mounted on the support structure if the application relates to a proposed collocation.
2. A site plan drawing indicating the proposed installation, right-of-way boundaries, name of street, utility pole identification number, abutting lots, all trees in the right-of-way within 50 feet of the proposed project, North point, and scale.
3. Identity and contact information for the entity performing the work in the right-of-way;
4. A certificate from an independent licensed professional engineer that a proposed installation is structurally sound;
5. Proof of all applicable licenses or other approvals required by the FCC.
6. Such other information as the Director may require.

B. Potential waiver of requirements for permit applications. The Director may waive plan detail requirements for any application to install attachments on existing structures that does not involve excavation or the use of heavy equipment or vehicles outside of the paved roadway.

Section 12D-130. Wireless support structures and facilities—requirements and findings.

A. Absent a specific finding by the Director, wireless facilities may only be installed on existing utility poles, and only entities certificated by the Maryland Public Service Commission pursuant

to the Annotated Code of Maryland, Public Services and Utilities, Division I, Title 7 or Title 8, as amended, may erect or contract to erect replacement poles in the City's right-of-way. To allow the installation of an additional or replacement pole, the Director must find that

1. Additional wireless facilities are necessary in the location of the proposed pole to provide adequate telecommunications coverage; and
2. Existing poles do not have the capacity for the necessary wireless facilities.

B. A permit shall not be issued for a proposed wireless support structure or facility when the location selected in the application is in an area where there is an overconcentration of structures or facilities in, on or over the right-of-way, as determined by the Director in his or her reasonable discretion and judgment. Any pole, equipment box, or other structure installed in a City right-of-way must:

1. Comply with all structural and safety standards specified in federal, State, County or City law, established by the Director, or provided in the permit conditions;
2. Not obstruct pedestrian or vehicular traffic flow or sight lines and not obstruct parking or the entering and exiting of persons from vehicles parked in the right-of-way;
3. Comply with the Americans with Disabilities Act;
4. If a pole, be at least 26 feet and not more than 50 feet above ground level in height, and allow for the collocation of at least three antennas;
5. If a replacement of an existing pole, not exceed the height of the existing pole by more than 10 feet or by more than 10% in diameter;
6. Not result in communications facilities other than antennas with a total volume of 28 cubic feet associated with a structure;
7. Have a color and finish that minimizes visual impact to the neighborhood, taking into consideration taking into consideration historic area designations and commercial district and other aesthetic guidelines;
8. Utilize components that minimize noise generation;
9. Comply with all relevant requirements of the Prince George's County Zoning Ordinance; and
10. Comply with such other requirements and conditions as the Director may determine are appropriate.

C. In the event that strict compliance with any provision of this chapter or any regulations promulgated hereunder, as applied to a specific proposed wireless facility or structure, would effectively prohibit the provision of services, the Director may grant an exemption from strict compliance.

D. Wireless facilities and support structures, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, and all FCC, State, and local regulations.

Section 12D-140. Antennae, equipment boxes, and other attachments.

A. All attachments to structures in the City right-of-way must:

1. For each pole, have boxes no greater in collective size than thirty cubic feet in volume;
2. Not extend the height of a structure on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
3. Have a color and finish that minimizes visual impact to the neighborhood, taking into consideration historic area designations, City facilities in the right-of-way, and commercial district or other applicable design guidelines;
4. If an antenna, be no greater than three cubic feet in volume, be screened, shrouded, concealed, or treated to minimize visual and acoustic impact, taking into consideration historic area designations and commercial district and other aesthetic guidelines. Antenna elements shall be flush mounted to the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers;
6. Have no exterior wiring if the pole on which it is mounted can accommodate internal wiring or, if necessary, have exterior wiring enclosed in a shielded conduit;
7. Utilize components that minimize noise generation;
8. If an equipment box, be mounted at ground level or at least 10 feet above ground level and be no larger than 15 cubic feet;
9. If proposed to be attached to a privately-owned utility pole, be authorized by an executed attachment agreement with the utility pole owner, setting forth, at a minimum, the title, date and term of the agreement;
10. Comply with all applicable requirements of the Prince George's County Zoning Ordinance; and
11. Comply with such other requirements and conditions as the Director may determine are necessary and appropriate.

Section 12D-150. Wireless facilities and support structures—permit issuance.

A. Wireless facilities and wireless support structures proposed to be located on City rights-of-way may be permitted upon a finding by the Director that:

1. The application complies with all standards and requirements set forth in Sections 12D-130 and 12D-140, as applicable;
2. The applicant has submitted proof of insurance and a performance bond required under this chapter;
3. The Prince George's County Telecommunications Facility Coordinating Committee has recommended the proposed installation if the installation is subject to review by the Committee;
4. The installation will not harm any urban forest tree, or the location of the installation minimizes the adverse impact of the installation on urban forest trees to the extent reasonably possible given the need for communications coverage;
5. The installation work will be conducted in a manner that minimizes the adverse impact of the project upon urban forest trees to the extent reasonable, including the use of reasonable tree protection measures; and
6. All wireless facilities associated with a wireless support structure, including wireless facilities associated with a proposed new antenna and pre-existing wireless facilities, will, for each pole, have pole-mounted equipment box(es) no greater in collective size than six (6) cubic feet in volume.

B. If the Director determines that any trees must be removed, the permit shall not be issued until the applicant pays the cost of replacing such trees, in accordance with the tree replacement requirements of Chapter 12B, except that at least one replacement tree shall be required for each tree that must be removed.

C. The Director may allow minor variances from the requirements of this section if the variance does not jeopardize the public health, safety, or welfare.

D. Work permitted under this section shall not be subject to the procedural requirements of Chapter 12B except as provided herein.

E. The Director may require modifications to a proposed project before granting a permit and impose conditions when granting a permit.

F. The Director may require the permittee to pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under this chapter and City regulations. The bond coverage may include, but not be limited to, removal of the facility, and maintenance obligations. The amount of the performance bond shall be set by the Director in an amount reasonably related to the obligations covered by the bond and shall be specified in the conditions of approval.

G. Installation must be completed within ninety days of the issuance of a permit.

H. Within five business days of the completion of installation, the permittee must submit to the Director certification from a licensed engineer that the installation is complete and complies with the approved technical description and site plan drawings of the installation and is structurally sound.

Section 12D-160. Conditions applicable to all wireless facilities and support structures.

In addition to compliance with the requirements of this chapter, all permittees and structures and facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the Director:

A. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. The permittee shall notify the City of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

1. Identity, including the name, address and 24-hour contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility or structure; and
2. The legal status of the owner of the wireless facility or wireless structure, including official identification numbers and FCC certification if applicable.

B. The permittee shall promptly respond to emergencies relating to its wireless facilities and wireless support structures.

C. At all times, the permittee shall ensure that the facility, as mounted with any collocated facilities, complies with the most current RF emissions standards adopted by the FCC.

D. If, at any time, the Director determines there is good cause to believe that the facility, as mounted with any collocated facilities, may emit RF emissions that are likely to exceed FCC standards, the Director may require the permittee to submit a technically sufficient written report certified by a qualified independent RF emissions engineer certifying that the facility is in compliance with such FCC standards within 10 days.

E. The permittee shall indemnify and hold harmless the City from any claims arising from the installation and presence of the wireless facilities and wireless support structures and shall maintain commercial liability insurance naming the City as additional insured of at least \$2,000,000.00 per claim for the permittee's activities and presence in, on, or around the City right-of-way, including coverage for bodily injury and property damage, until the facilities are fully and completely removed.

F. The permittee shall defend, indemnify, protect and hold harmless the City, its officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the City and its officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the City concerning the permit

and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The City shall promptly notify the permittee of any claim, action, or proceeding against which the City seeks defense. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding, or revoking a permit and requiring the modification or removal of an installation. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.

G. Any modification, removal, or relocation of the facility shall be completed within 90 days of written notification by the City unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require a permit. In the event the facility is not modified, removed, or relocated within said period of time, the City may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances, the City may modify, remove, or relocate wireless facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

H. The permittee shall, at its sole expense, keep its wireless facilities and wireless support structures in a safe condition and in good and neat order and repair.

I. The permittee shall repair, restore, or replace any portion of the right-of-way that is damaged by its wireless facilities and wireless support structures or the installation or maintenance thereof. The permittee authorizes the City to repair, restore, or replace the damaged portion of the right-of-way and shall reimburse the City for the costs incurred if the permittee fails promptly to perform the work.

J. The City retains the right to cut or remove any wireless facilities and wireless support structures it deems necessary in response to a public emergency, and the permittee shall be responsible for the cost of restoration.

K. The permittee promptly shall relocate or remove and replace, as appropriate, its wireless facilities and wireless support structures upon written request by the City when the City determines that the facility or structure materially interferes with the City's use of the right-of-way. The permittee authorizes the City to remove its wireless facilities and wireless support structures and shall reimburse the City for the costs incurred if the permittee fails promptly to respond to a request from the City.

L. If the permittee ceases to operate or abandons any of its wireless facilities or wireless support structures, it shall remove them within 60 days. If the permittee fails to remove the abandoned facilities or support structures, the City may perform the work and collect the reasonable cost thereof from the permittee.

M. All conditions of approval shall be binding as to the applicant, permittee and all successors in interest.

Section 12D-170. Right-of-way maintenance fee.

The owner of a wireless facility or support structure shall pay an annual right-of-way maintenance fee for each antenna and each support structure other than a preexisting utility pole or replacement pole within 15 days of the approval of the permit application and on or before June 30 each year thereafter. Until June 30, 2019, the annual right-of-way maintenance fee shall be \$270 for each antenna and each support structure. Thereafter, the fee shall be as set forth in the City of Mount Rainier Fee Schedule.

Section 12D-180 Market rent for occupancy of City rights-of-way.

A. In addition to the annual right-of-way maintenance fee, the owner of a wireless facility or support structure shall be liable to the City for the value of the public property occupied by the facility or support structure. From the effective date of this section until June 30, 2020, the annual market rent for the occupancy of the City right-of-way shall be \$1,000 per antenna and \$3,000 per support structure other than a preexisting utility pole or a replacement pole. Commencing July 1, 2020, and continuing each July 1 thereafter, the market rent shall be adjusted to reflect the percentage increase, if any, in the City's assessed real property tax base.

B. Unless and until the authority of the City to charge market rent for occupancy of its right-of-way is clarified under applicable Federal and State law, telecommunications facilities and support structures shall be allowed to occupy City rights-of-way upon payment of the annual right-of-way maintenance fee, but the owner of such facilities and support structures shall be liable for the market rent for the occupancy of the City right-of-way retroactive to the date of installation plus interest accrued at the rate established for delinquent property taxes in section 11-107 of the Courts and Judicial Proceedings Article of the Maryland Code, as amended.

Section 12D-190. Annual certification.

Between June 1 and July 1 of each year that a permitted wireless facility or support structure remains in the City right-of-way, the owner shall submit to the Director an affidavit signed by an authorized representative of the owner confirming that the facility or support structure remains in use and remains covered by insurance.

Section 12D-200. Violations and enforcement.

A. A violation of this chapter and any regulations adopted to implement or enforce this chapter is a Municipal Infraction subject to a fine of \$500. A repeat violation shall be a Municipal Infraction subject to a fine of \$1,000.

B. Each day that a violation of a term or condition of a permit continues shall constitute a separate violation.

C. Each day that an installation for which the City has not issued a permit remains in the City right-of-way shall constitute a separate violation.

D. The City may abate outstanding violations and charge the cost of abatement to the responsible person.

E. In addition to all other means of enforcement provided for by law and in this chapter, the City Manager, Director, Code Enforcement Officers or police officers may issue a stop-work order to any person who violates any provision of this chapter or any regulations adopted to implement or enforce this chapter. Any person who receives such a stop-work order shall immediately cease work. The person shall comply with all terms and conditions imposed by the stop-work order before the work may resume.

Section 12D-200. Authority of the Director.

The Director shall develop forms necessary for the implementation of this chapter and may promulgate additional written policies and requirements.

THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF MOUNT RAINIER THIS 7th DAY OF MAY, 2019.

Attest:



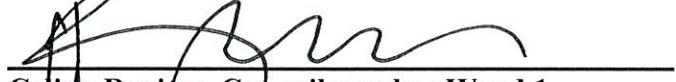
Miranda Braatz, City Manager



Malinda Miles, Mayor



Luke Cheseck, Councilmember Ward 1



Celina Benitez, Councilmember Ward 1



Bryan Knedler, Councilmember Ward 2

Shivali Shah, Councilmember Ward 2

Explanatory Note: Additions following first reading are shown with underlining. Deletions following first reading are shown with ~~strikethrough~~.